



Crl RC .No.847 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl RC No.847 of 2017

S.Inbasekaran

..Petitioner /Appellant /Accused

Vs.

S.Pandian [Deceased]

**2. Meenakshi
W/o.S.Pandian**

**3. Ms.P.Priya
D/o.S.Pandian**

**4. Ms.Vani Rushiyendran
D/o.S.Pandian**

**5. Ms.S.Geetha
D/o.S.Pandian**

**[Suo-motu impleaded vide order
dated 14.03.2023 in Crl RC No.847 of 2017**



Crl RC .No.847 of 2017

by NAVJ]
WEB COPY

..Respondents / Respondents/Complainants

Prayer: Criminal Revision case is filed under Section 397 (1) r/w 401 of Cr.PC to set aside the order dated 22.09.2015 made in C.A.No.15 of 2015 passed by the II Additional District and Sessions Judge, Ranipet, Vellore District which confirms the order passed in the STC No.10 of 2009 dated 27.01.2015 passed by the learned District Munsif cum Judicial Magistrate Court, Arcot, Vellore District sentencing him to undergo six months rigorous imprisonment and to pay a fine of Rs.1,45,000/- under Section 357 (3) of Cr.PC and in default to undergo two months simple imprisonment and acquit the petitioner.

For Petitioner : Mr.T.Surendran

For Respondents : -----

ORDER

This Criminal Revision case has been filed against the judgment and order passed by the II Additional District and Sessions Judge, Ranipet in Crl.A.No.15 of 2015 dated 22.09.2015, dismissing the appeal and confirming the judgment and order passed by the District Munsif cum Judicial Magistrate Court, Arcot,



Crl RC .No.847 of 2017

WEB COPY

in STC No.10 of 2009 dated 27.01.2015, convicting the petitioner for offence under Section 138 of the Negotiable Instruments Act and sentencing him to undergo six months rigorous imprisonment and to pay compensation of a sum of Rs.1,45,000/- under Section 357 (3) of Cr.PC and in default to undergo two months simple imprisonment.

2. The respondent filed a criminal complaint against the petitioner on the ground that the petitioner took a hand loan of a sum of Rs.1,45,000/- from the respondent and had issued a cheque dated 24.11.2008 in favour of the respondent for a sum of Rs.1,45,000/-. When this cheque was presented by the respondent in his bank, the same was returned with an endorsement “insufficient funds”. Immediately, a legal notice dated 02.12.2008 was issued by the respondent to the petitioner and the same was received and acknowledged by the petitioner on 05.12.2008. The



Crl RC .No.847 of 2017

WEB COPY

petitioner neither paid the cheque amount nor gave a reply. In such circumstances, the respondent filed a private complaint against the petitioner for offence under Section 138 of the Negotiable Instruments Act.

3. The respondent examined himself as PW1 and marked P1 to P4. The petitioner examined one Kandasamy on his side as DW1.

4. The Trial Court on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence came to a conclusion that the legal presumption under Section 139 of the Negotiable Instruments Act must go in favour of the respondent and that the petitioner had failed to rebut the said legal presumption and accordingly, the



Crl RC .No.847 of 2017

petitioner was convicted and sentenced for offence under Section 138 of the Negotiable Instruments Act.

5. Aggrieved by the same, the petitioner filed an appeal and it was heard by the Appellate Court in Crl A No.15 of 15 and the judgment and order passed by the Trial Court was confirmed. Aggrieved by the same, the present Criminal Revision case has been filed before this Court.

6. When the matter came up for hearing on 28.02.2023, this Court passed the following order :-

When the matter was taken up for final hearing on 16.12.2022, this Court passed the following order:

Learned counsel for the petitioner submits that the cheque amount involved in this case is Rs.1,45,000/-, of which, a sum of Rs.36,250/- has been deposited before the trial Court. Only the balance amount of



Crl RC .No.847 of 2017

Rs.1,08,750/- is to be paid. Further, it is submitted that the petitioner is ready with the amount. Even, in the previous occasion, when the matter was referred before the Lok Adalat for settlement, the petitioner was very much available with the money. Since the respondent did not turn up, he was unable to pay the money and settle the issue. Thereafter, the case was referred back to this Court.

2. This Court, on 16.06.2022, recorded that learned Additional Public Prosecutor informed the legal heirs of the respondent, who is no more, about the pendency of the above case.

3. The Inspector of Police, Arcot Town, is directed to inform the legal heirs of deceased respondent, S.Pandian, S/o.Seethapathi, No.57/9, Jagannathasamy Koil Street, Arcot Town & Taluk, Vellore District about the pendency of the above case and ascertain as to whether they are willing to receive the Demand Draft for a sum of Rs.1,08,750/-, which the petitioner is



WEB COPY



Crl RC .No.847 of 2017

ready to hand over to them.

4. Post the matter on 30.01.2023.

2.It is reported that the respondent died and his legal heirs must be impleaded as parties. The Inspector of Police, Arcot Town Police Station, Vellore District, is directed to collect the particulars of the legal heirs of the deceased respondent. Once these legal representatives come on record, the entire cheque amount can be settled in their favour and the matter itself can be closed.

*3.The petitioner is directed to deposit a sum of Rs.1,08,750/- to the credit of the District Munsif cum Judicial Magistrate, Arcot Town & Taluk, Vellore District on or before **10.03.2023**.*

*4.Post this case under the caption for passing further orders on **13.03.2023** and in the meantime, the police is directed to collect the particulars of the legal heirs of the deceased respondent.*



Crl RC .No.847 of 2017

WEB COPY

7. When the matter was taken up for hearing today, the learned counsel for the petitioner submitted that inspite of the petitioner being informed that he must deposit a sum of Rs.1,08,750/- to the credit of Trial Court, the said amount has not been deposited. The learned counsel for the petitioner seeks for some more time to deposit this amount.

8. The learned counsel for Respondent submitted that he has only received the particulars of the legal heirs of the deceased respondent and the legal heir ship certificate is yet to be furnished to him.

9. Mr.R.Sasi Kumar, Special Sub-Inspector of Police, Arcot, Town Police Station, was present before this Court. He has instructed the learned Government Advocate that there are three



Crl RC .No.847 of 2017

WEB COPY

daughters for the deceased respondent and they are Ms.P.Priya, Ms.Vani Rushiyendran and Ms.S.Geetha. The learned counsel for respondent also confirms the fact that the respondent died leaving behind his wife and three daughters as his legal heirs. In view of the same, Mrs. Meenakshi -Wife ad Ms.P.Priya, Ms.Vani Rushiyendran and Ms.S.Geetha - daughters are suo-motu added as the legal heirs of the deceased respondent. The Registry is directed to carry out the necessary amendment in the cause title. The learned counsel who was appearing for the respondent shall take immediate steps to file vakalat on behalf of the impleaded legal heirs of the deceased respondent.

10. In the considered view of this Court, the petitioner has failed to deposit the amount as directed by this Court and hence, this Court is taking up this Criminal Revision case and dealing with the same on merits.



Crl RC .No.847 of 2017

WEB COPY

11. Heard Mr.T.Surendran, learned counsel for the petitioner and Mr.A.Velmurugan, learned counsel for Suomotu impleaded respondents.

12. The main ground that was urged by the learned counsel for the petitioner was that the petitioner did not take any loan from the respondent and the cheque was not issued towards any legally enforceable debt or liability. It was further submitted that the respondent did not even mark any document to prove that the petitioner had taken any loan from the respondent and in the absence of any document to prove the transaction, the presumption under Section 139 of the Negotiable Instruments Act cannot be applied in favour of the respondent. Accordingly, the learned counsel for the petitioner sought for interference of the judgment and order passed by both the Courts below and to allow this



Crl RC .No.847 of 2017

criminal revision case.

WEB COPY

13. The defence that was taken by the petitioner has been considered by both the Courts below. Both the Courts below found that the signature that was found in the subject cheque was not disputed. That apart, the respondent had also explained in the course of trial as to the purpose for which the petitioner had taken the loan. The respondent had stated that the petitioner had borrowed the money for the purpose of construction of house and hence, came to a conclusion that the cheque was given towards a legally enforceable debt / liability. Both the Court below also took into consideration the fact that the petitioner inspite of receiving a legal notice did not chose to even give a reply for the same and the petitioner during the cross-examination has admitted that he is known to the respondent for more than 7 to 8 years.



Crl RC .No.847 of 2017

WEB COPY

14. In the considered view of this Court, both the Courts below have properly appreciated the evidence available on record and have given sufficient reasons as to how the legal presumption under Section 139 of the Negotiable Instruments Act must be applied in favour of the respondent. This Court does not find any perversity in the findings of both the Courts below warranting the interference of this Court in exercise of its revisional jurisdiction. This Court enquired the learned counsel who was appearing for the respondent as to whether the legal heirs of the respondent will be willing to receive the cheque amount from the petitioner. The learned counsel fairly submitted that the legal heirs of the respondent are willing to receive the cheque amount and in which event, the learned counsel leave it to this Court to pass appropriate orders in this criminal revision case.

15. In the result, this Criminal Revision case is disposed of in



Crl RC .No.847 of 2017

WEB COPY

the following manner :-

(a) The petitioner is directed to deposit the sum of Rs.1,08,750/- before the Trial Court on or before 28.03.2023. On such deposit, the petitioner would have deposited the entire cheque amount of Rs.1,45,000/-, since the petitioner had already deposited a sum of Rs.36,250/-.

(b) If the petitioner complies with the direction in clause (a), the offence shall stand compounded and the judgment and order passed by both the Courts below shall stand set aside.

(c) If the petitioner complies with the direction issued in clause (a), it is left open to the legal heirs of the respondent to file an appropriate memo before the Trial Court and seek for the withdrawal of the total sum of Rs.1,45,000/- deposited by the petitioner and the Trial Court is directed to entertain the memo



Crl RC .No.847 of 2017

WEB COPY

and permit the legal heirs of the deceased respondent to withdraw the amount.

(d) If the petitioner fails to deposit the amount as directed in clause (a), the petitioner is directed to surrender before the Trial Court on 30.03.2023 and the Trial Court shall take steps to ensure that the petitioner undergoes the sentence imposed against him by the Trial Court. And

(e) If the petitioner fails to surrender as directed in clause (d), the Trial Court shall immediately take steps to secure the petitioner and to make him undergo the sentence imposed by the Trial Court.



Crl RC .No.847 of 2017

This Criminal Revision case is disposed of in the above terms.

WEB COPY

No costs.

14.03.2023

Internet : Yes

Index : Yes

Speaking Order / Non Speaking Order

rka



WEB COPY



CrI RC .No.847 of 2017

N. ANAND VENKATESH, J.

rka

To

1. The II Additional District and Sessions Judge, Ranipet,
Vellore District
2. The District Munsif cum Judicial Magistrate Court, Arcot,
Vellore District

CrI RC No.847 of 2017

14.03.2023